IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 429 of 2000
in
SPECIAL CIVIL APPLICATION No 8826 of 1999
with
LETTERS PATENT APPEAL Nos 430 to 471 of 2000
with
SPECIAL CIVIL APPLICATION No 2327 of 1984
with
SPECIAL CIVIL APPLICAITON Nos 3946 to 3950 of 1985
with
SPECIAL CIVIL APPLICATION Nos 3966 to 3969 of 1985
with
SPECIAL CIVIL APPLICATION No 3116 of 1984
with
SPECIAL CIVIL APPLICATION Nos 1945 to 1952 of 1987
with
CIVIL APPLICATON Nos 6632 to 6674 of 2000
in
LETTERS PATENT APPEAL Nos 429 to 471 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

GUJARAT WATER SUPPLY AND SEWERAGE BOARD

Versus

KETANBHAI DINKARRAY PANDYA

APPEARANCE :
MR JR NANAVATI for MR HS MUNSHAW
for the Appellants
MR PH PATHAK for the Respondents
(IN ALL THE LPAs & CAs)
MR JR NANAVATI for Petitioner
MR NR SAHANI for MR MANOJ POPAT for respondents
(IN ALL THE WRIT PETITIONS)

CORAM : MR. JUSTICE B.J.SHETHNA
and
MR. JUSTICE A.L.DAVE

Date of Judgment : 16.06.2003

C.A.V.JUDGMENT
PER : MR. JUSTICE B.J.SHETHNA

#. Common question that arises to be addressed to by us in this judgment is, Whether Labour Court was right in entertaining claim of workman, while exercising powers under Section 33C(2) of the Industrial Disputes Act, in absence of formal adjudication by competent court or authority when the claim was not admitted by the other side ?

#. All the Letters Patent Appeals are disposed of by this common judgment as they are arising out of the common judgment and order dated 9.5.2000 passed by the learned Single Judge of this court (Coram : H.K.Rathod, J.) dismissing all the writ petitions filed by the appellants-Gujarat Water Supply and Sewerage Board (for short "the Board").

#. All the aforesaid writ petitions i.e. Special Civil Application Nos.2327, 3116, 2327, 3116 of 1994, Special Civil Application Nos.3946 to 3950 of 1985 and 3966 to 3969 of 1985, Special Civil Application Nos.1945 to 1952 of 1987 are also disposed of by this common judgment as the same were referred to the Division Bench by learned Brother D.H.Waghela, J. by his common order dated 10.10.2000 in view of the pendency of the above appeals before this court arising out of the aforesaid common judgment and order dated 9.5.2000 passed by learned

Brother H.K.Rathod, J. dismissing all the writ petitions filed by the Gujarat Water Supply and Sewerage Board against the order passed by the Labour Court, which was direct in conflict with the judgment and order dated 4.12.1996 passed by another learned Single Judge of this court (Coram : S.K.Keshote, J.) in Special Civil Application No.3117 to 3119 of 1994 whereby it was held that direct writ petitions filed by the workmen without prior adjudication before the Labour Court were not maintainable.

#. Learned counsel Shri J.R.Nanavati appeared for Shri Munshaw for the appellant-Gujarat Water Supply and Sewerage Board in all the writ petitions and also appeared in Jamnagar Municipal Corporation. Shri P.H.Pathak appeared for the respondent-workmen in all the Letters Patent Appeals and Shri N.R.Sahani for Shri Manoj Popat for respondent-workman in all the writ petitions.

#. As such, all these matters were argued and heard together and are decided by this common judgment.

#. 43 workmen working on different posts like Diesel Operator, Electrical Operator, Electrical Operator, Attendant, Chowkidar, Diesel Operator, Electrical Operator, Line Man, Store Man, Store Chowkidar, Heavy Truck Driver, Pump Operator etc. with "the Board" straightaway approached Labour Court, Amreli in 1995 for recovery of over time wages from "the Board" by way of Separate Recovery application Nos.866 to 908 of 1995, which are now given new Nos.318 to 360 of 1998. The same were allowed by Labour Court, Amreli by its common judgment and award dated 26.7.1999.

#. The aforesaid impugned common judgment and award dated 26.7.1999 passed by the Labour Court, Amreli was challenged by "The Board" before this court by way of separate writ petitions i.e. Special Civil Application Nos.8826 to 8868 of 1999. The same were initially placed before learned Single Judge of this court (Coram : Ms.R.M.Doshit, J.). While issuing notice on all these writ petitions and making it returnable on 17.12.1999 Her Lordship stayed the execution and operation of the impugned common judgment and award passed by the Labour Court in favour of the respondent-workmen. However, for some or the other reason the matters could not be heard on the returnable date and adjourned from time to time before different Hon'ble Judges of this court.

#. When all the writ petitions were placed before H.K.Rathod, J. on 9.5.2000 His Lordship was pleased to

admit all the writ petitions by issuing 'Rule' on it and Shri P.H.Pathak, learned counsel appearing for the respondents-workmen waived notice of 'Rule' and on the facts and circumstances of the case all the writ petitions were taken up for final hearing by His Lordship on that very day and after hearing the learned counsel for the parties at great length and considering number of judgments of the Hon'ble Supreme Court as well as this court His Lordship dismissed all the writ petitions on the same day i.e. 9.5.2000 by his common judgment and order running into as many as 40 typed pages. While dismissing all the writ petitions His Lordship also directed "the Board" to implement the impugned common judgment and award passed by Labour Court, Amreli within two months from the date of receipt of the certified copy of his common judgment and order.

#. "The Board" has challenged the common judgment and order dated 9.5.2000 passed by the learned Single Judge by way of above Letters Patent Appeals with Civil Applications for stay against common judgment and award passed by the Labour Court and the common judgment and order passed by learned Brother H.K.Rathod, J.

##. Initially, all the appeals were placed before the Division Bench of this court (Coram : D.M.Dharmadhikari, CJ & J.M.Panchal, J.) on 9.8.2000. Their Lordships were pleased to admit all the appeals and ordered to place it for final disposal in the month of September, 2000 and also stayed the common judgment and order dated 9.5.2000 passed by the learned Single Judge dismissing the writ petitions filed by "the Board" and the impugned common judgment and award passed by the Labour Court on 26.7.1999. However, for some or the other reasons the appeals could not be heard till 8.5.2003.

On 8.5.2003, which was a day for final hearing, the hearing of all the matters commenced before us and it was over on the next day i.e. 9.5.2003, which was last working day before Summer Vacation. All the learned counsel for the parties were heard at great length.

##. The respondents - workmen in appeals are working with "the Board" in their different capacity like Diesel Operator, Electrical Operator, Attendant, Watchmen, Line man, Chowkidar, Store Watchmen, Store man, Heavy Truck Driver etc. The deta..R

Recovery Appln.	Name of Applicant & Designation	Date of Joining	Amount in Rs.
318/98	Ketan Pandya Diesel Operator	09.11.91	54306.15
319/98	Bharatbhai Dave Electrical Operator	01.11.90	61176.60
320/98	Bharatbhai Mehta Electrical Operator	10.05.91	59663.30
321/98	Yashvantray Gohil Attendant	01.05.91	49431.00
322/98	Rafikbhai Parmar Attendant	01.04.90	52839.35
323/98	Nagjibhai Dhandhal Chowkidar	11.05.91	49186.35
324/98	Paresh Pandya Diesel Operator	31.01.92	50199.45
325/98	Kanubhai Vala Chowkidar	01.09.91	45062.00
326/98	Himatbhai Makwana	--	40054.20
327/98	Ashokkumar Pandya Attendant	26.11.91	42610.50
328/98	Rameshbhai Makwana Electrical Operator	11.05.90	57193.20
329/98	Arvindbhai Balva Electrical Operator	13.02.91	60183.45
330/98	Jodhabhai Jigrana Attendant	31.02.92	41441.10
331/98	Bhupatbhai Vaghela Chowkidar	01.02.92	42074.55
332/98	Osman Chauhan Chowkidar	10.04.92	39907.55
333/98	Gokulbhai Singal Line Man	31.01.90	50910.00

334/98 Bhawan Parmar 05.02.91 50109.15
 Line Man

335/98 Bhabhlubhai Lila 06.01.92 42690.85
 Lineman

336/98 Valjibhai Panaliya 23.03.89 72445.47
 Lineman

337/98 Balabhai Bar 01.01.91 51082.20
 Lineman

338/98 Gordhan Mavani 30.07.90 54665.60
 Line man

339/98 Mansukhbhai Parnaliya 28.10.90 31293.60
 Line man

340/98 Parsottam Mevada 11.02.91 31293.60
 Line man

341/98 Ashokkumar Trivedi 01.02.91 61425.15
 Line man

342/98 Nagbhai Kadcha 18.02.91 50363.55
 Line man

343/98 Karbhai Adedra 18.02.91 50154.60
 Line man

344/98 Merubhai Adedara 26.04.91 48213.90
 Line man

345/98 Dhirubhai Gangadiya 15.09.91 81471.18
 Office Chowkidar

346/98 Premjibhai Gohil 01.11.91 44903.35
 Store Chowkidar

347/98 Rajnikant Rathod 25.02.89 95055.85
 Heavy Truck Driver

348/98 Prembhai Vaniya 30.01.90 60154.35
 Line man

349/98 Muljibhai Vaniya 30.01.90 59522.20
 Line man

350/98 Rajesh Sisodiya 10.07.91 57507.60
 Electrical Operator

351/98 Jaga Megha 10.08.91 62485.80
Line man

352/98 Karimbhai Jamalbhai 02.02.91 62475.80
Pump Operator

353/98 Mohan Chauhan 05.03.92 22090.20
Electrical Pump
Operator

354/98 Kanji Mevada 30.01.90 60061.35
Line man

355/98 Jayantilal Savaliya 11.02.91 51899.85
Storeman

356/98 Hardevsinh Hemubhai 28.01.91 44247.00
Chowkidar

357/98 Laljibhai Parmar 20.08/91 46995.60
Line man

358/98 Mukeshbhai Dangar 10.02.92 41431.35
Line man

359/98 Mohan Bagarda 31.01.91 51753.95

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360/98 Bhikhabhai Saiyed 01.01.91 52497.75
Chowkidar

##. From the above, it is clear that all the 43 workmen appointed on the different posts like Diesel Operators, Electrical Operators, Attendant, Watchman, Line Man, Chowkidar, Store Watchman, Storeman, Heavy Truck Driver etc. between 25.2.1989 to 10.4.1992 on different dates. Surprisingly, all of them claimed overtime wages upto 31.5.1995 from their respective dates of appointments by filing recovery applications before the Labour Court on one day i.e. on 9.8.1995. Minimum amount paid to workman Mohanbhai Chauhan, Electrical Pump Operator, Applicant of Recovery Application No.352 of 1998, is Rs.22090.20 ps., whereas the maximum amount of Rs.95055.85 ps. is paid to workman Rajnikant Rathod, Heavy Truck Driver, Applicant of Recovery Application

No.347 of 1998. Thus, Labour Court directed "the Board" to make the payment of more than Rs.22 lacs as overtime wages to the respondents workmen upto 31.5.1995 from the date of their initial appointment by its impugned common Judgment and Award dated 26.7.1999.

Each workman has stated in his Recovery Application that he is serving with "the Board" since long and that "the Board" is taking work from him on daily wage basis, though it is of a permanent nature and that he is not made permanent in service, so as to deny other benefits of service of a permanent employee, which is unfair labour practice u/s.25(T) of the I.D.Act for which he had approached the High Court. That "the Board" is taking 12 hours work instead of 8 hours per day from him, but not paying wages of overtime of four hours per day. He is dailywager, therefore, he was always under the fear of termination. He is denied the benefits under the Minimum Wages Act and other Laws.

##. It may be stated that undisputedly on behalf of all the 43 workmen only one workmen Shri Ketan Pandya Applicant of Recovery Application No.318 of 1998 was examined. On an application Ex.8, all the Recovery Applications were ordered to be consolidated by the Labour Court as the common question of law was involved in all the matters. It may also be noted that all the workmen claimed their dues upto 31.5.1995 from the date of joining their service with "the Board". Joint reply was filed by the Appellants No. 1 & 2 in all the Recovery Applications wherein they have denied the claim of the workmen made by them in their Applications and stated that their Applications were not true. They have specifically pleaded that the workmen were not entitled for any benefit of a permanent workmen because their appointment was under the Rules framed as per the Report of Dolatbhai Parmar's - Committee. They were dailywagers and their posts are also of dailywagers and no unfair Labour practice is committed by them u/s.25(T) of the I.D.Act as alleged by them. They have specifically stated that the workmen have not to work more than 8 hours. They have stated that no workman was made to work for 12 hours per day, therefore, there was no question of paying overtime wages to any workman. It was specifically contended by "the Board" before the Labour Court that Recovery Application u/s.33C(2) before the Labour Court without pre-adjudication of their claim regarding overtime by the Labour Court u/s.10 of the I.D.Act was not maintainable. Along with their written statement, list Ex.20 of the documents was produced which includes report of Dolatbhai Parmar's Committee dated

10.11.1988, but the same was not exhibited by the Labour Court because of the objection of the Advocate for the workmen. We have perused the copy of oral evidence of parties provided to us by learned Advocate, Shri Pathak.

##. On behalf of all the workmen Shri Ketan Pandya Ex.16, was examined before the Labour Court. He stated that he is serving with "the Board" since last 8 years as dailywagers. He was kept for 5 years as dailywager and thereafter, he is kept in the service on fixed salary. Thus, since last 8 years he is serving without break. He was given employment by the Deputy Executive Engineer on the instruction of the opponent from 9.10.1991 as Operator. At that time Shri J.K.Waghani was Deputy Executive Engineer. He is working as Operator on Pumping Station at village Gufaniya, Tal. Lathi. It is an essential service of a permanent nature and he is discharging his duty from 8.00 p.m. to 8.00 a.m. In the beginning the opponents were taking work for 12 hours per day from him, but paying the wages only for 8 hours and since last 3 years he is paid fixed salary. He is not paid the regular wages and other benefits given to other permanent work-charge employees, though he is doing the same work. He was threatened by the opponents and their subordinates of termination from service if such demand is made. Similar threat was given to other workmen also. Since 9.10.1991 the respondents are taking work for 12 hours per day from him, but paying wages for only 8 hours and thereby the opponents have committed breach of the provisions of the Minimum Wages Act. He was also not given any holiday or off day and the opponents were taking the work from him for 30 days and paying the salary of 29 days. However, since last 3 years he is given all public holidays, but no wages are paid for the overtime. Along with him 42 other workmen are working as Pump Operator, Line man, Chowkidar, etc. From them also the opponents are taking work for 12 hours per day, but paid wages for only 8 hours. They have also filed separate Recovery Applications before the Labour Court. He has claimed Rs.54,606.15 ps. towards overtime work for the period from 9.10.1991 to 31.5.1995. There is no written order of his appointment. He was appointed by an oral order. Totally false and vague reply is filed to his Recovery Application by the opponents. His services is an essential service of supplying water for which the presence of workmen is required for 24 hours. There is only one reliever to relieve him from work and he has to work for 12 hours per day. Earlier also he was working for 12 hours in a day and presently also he is working for 12 hours in a day. There were no shifts in the past. By committing the breach of the provisions of Minimum

Wages Act he is paid the salary for only 8 hours per day, therefore, he has filed Recovery Application and claimed wages for overtime. He was cross examined by Advocate Shri Gandhi for "the Board". In his cross he denied that the work of supplying water in villages continued only for 2 to 3 hours in a day and work of filling tanks is of 5 to 7 hours. However, he admitted that he had not made any Application in writing "the Board" about any such threat of dismissal from service given to him by the opponents. From his cross it appears that he is working as Pump Operator supplying the water to the villages and the said work must be of 2 hours in a day and work of filling tanks must be of 5 to 6 hours in a day. It is clear from his admission that he never made any complaint in writing to anyone about taking work for 12 hours of him. Therefore, it is not possible to believe that he had made oral complaint to the then Executive Engineer about taking work of 12 hours per day. He has not named the officer, who gave him threat. No other details like place, time and date, etc. are also given by him regarding such so called threat.

##. From the perusal of the averments made in all the 43 applications one thing is clear that all the 43 workmen claimed that right from the day one of joining their services the opponent Board was taking 12 hours work in a day from them, irrespective of the fact whether they joined service in 1989, 1990, 1991 or 1992 till 31.5.1995 and no wages for overtime were paid to them. One can understand that a person in service may not complain for some time but it is not possible that all would not make complaint in writing for so many years only because threat of termination. Unfortunately, neither the Labour Court nor the learned Single Judge of this Court considered this aspect as well as the evidence and the Labour Court has wrongly jumped to the conclusion that all the workmen were working 12 hours per day, but paid the salary for only 8 hours per day, therefore, they were entitled for overtime of 4 hours per day.

##. In the instant case, on behalf of the Board, Shri Suresh Chauhan, Deputy Executive Engineer was examined at Ex.27. He stated in his evidence that because of the power failure some hours are wasted and some time the workmen had to work more for supplying the water as the supplying of water is an essential service and, therefore, the workmen had to work little more on that particular day. But, that does not mean that he admitted in his evidence that they were taking 12 hours work everyday from the workmen as held by the Labour Court. He has specifically stated in his evidence that duty of

Valveman is only for 3 hours for the same purpose. Some time water is supplied for 4 hours and some time for 5 hours but it is not necessary that the duty hours of Valveman and Lineman are of 8 hours. The post of Chowkidar is at the Headquarter, Dam site and village and at all the 3 places Chowkidars were there and they have to discharge different duties during day and night time and Pumping Stations were working during 2 shifts and dailywager were not entitled for benefit of holidays.

Unfortunately, the Labour Court has completely misread this evidence and came to a perverse finding that it is proved from the evidence of workman-Ketan Pandya and Dy. Executive Engineer, Shri Chauhan that the workmen were working for 12 hours per day instead of 8 hours per day and paid salary for 8 hours, therefore, they were entitled for overtime of 4 hours per day.

##. It may be stated that before approaching the Labour Court by way of Application u/s.33C(2) of the I.D.Act they had first approached this Court by way of writ petition for regularization in service and also against their apprehended termination from service, but the said petition was withdrawn and, thereafter, they approached the Labour Court by way of Application u/s.33C(2) of the I.D.Act instead of raising dispute before the Labour Court by way of reference under Section 10 of the I.D Act.

##. Before the Labour Court it was submitted by the "Board" that it had no jurisdiction to straightaway entertain the applications under Section 33C(2) of the I.D.Act without pre-adjudication of their claim regarding over time wages. It was also submitted that out of 43 workmen only one workmen, Shri Ketan Pandya, working as Pump Operator was examined and his evidence was wholly unreliable. As against that there was an evidence of Shri Suresh Chauhan, Deputy Executive Engineer of "the Board", who has clearly stated that "the Board" was not taking over time work from any of the workmen. It was, therefore, submitted before the Labour Court by "the Board" that even if the Labour Court comes to a conclusion that application under Section 33C(2) filed by the workmen regarding the claim of over time wages are maintainable without pre-adjudication of their claim even then there is no reliable evidence led by the workmen to show that they had worked over time for several years.

##. However, the Labour Court by its impugned common judgment and award came to the conclusion that direct applications under section 33C(2) of the Industrial

Dispute Act filed by the workmen without pre-adjudication of their claim regarding over time wages, were maintainable and it has further held that the work was of essential nature and it was proved from the evidence of workmen, Shri Ketan Pandya that all 43 workmen were working 12 hours instead of 8 hours per day, therefore, there was no reason to deny the relief claimed by them regarding over time wages of 4 hours per day for the period during which they had worked. The Labour Court also held that the workmen had pre-existing right and that they had worked over time for which no wages were paid for which they were entitled under the Minimum Wages Act. Therefore, there was no need of prior adjudication of claim in their cases.

##. Before the learned Single Judge it was contended by the learned counsel for "the Board" that the Labour Court had no jurisdiction to straightaway entertain applications under Section 33C(2) of the Industrial Dispute Act without pre-adjudication of their claim by the competent authority or the court. It was also submitted that even if the court comes to a conclusion that the applications under Section 33C(2) were maintainable without pre-adjudication of their claim then also there was no reliable evidence on which the Labour Court could have passed the award in favour of the workmen as except Pump Operator, Shri Ketan Pandya no one was examined on behalf of other 42 workmen. It was also contended before the learned Single Judge that the Labour Court had completely ignored the evidence of Shri Suresh Chauhan, Deputy Executive Engineer of "the Board", who has in clear terms stated that none of the workmen worked overtime. It was also submitted that the finding recorded by the Labour Court that the workmen worked for 12 hours instead of 8 hours per day and paid salary of 8 hours is absolutely perverse.

##. However, on behalf of respondents-workmen Shri Pathak, learned counsel submitted before the learned Single Judge that the right of the workmen to recover overtime wages was statutory right under sections 13 and 14 of the Minimum Wages Act and Rule 25 of the Rules. He also submitted that the workmen had pre-existing right, therefore, without pre-adjudication of their claim the Labour Court was right in entertaining direct applications under Section 33C(2) of "the Act" and decided it in favour of the workmen as there was sufficient evidence in the form of evidence of workman-Shri Ketan Pandya. Shri Pathak had also submitted before the learned Single Judge that there was no delay on the part of the workmen in approaching Labour

Court under Section 33C(2) of "the Act". In support of his submission he had relied upon the judgment of this court reported in 1998(2) GLH 996. Shri Pathak further contended before the learned Single Judge that under Section 33C(2) of the Act the Labour Court had wider jurisdiction to entertain any claim of the workmen based on the statutory provisions. He submitted that once the Labour Court came to the conclusion that the workmen had worked over time then such a finding of fact cannot be interfered by this court in its writ jurisdiction as this court cannot re-appreciate the evidence in its writ jurisdiction in exercise of its powers either under Article 226 or under Article 227 of the Constitution of India. Judgments of the Hon'ble Supreme Court reported in (i) 1983 (1) SCC 403 and (ii) AIR 1964 SC 743 and the judgment of this court reported in 1998 (2) GLH 996 were relied on by Mr.Pathak in support his submission.

##. After considering rival submissions made by the learned counsel for the parties and the provisions of the Industrial Disputes Act as well as Minium Wages Act, the learned Single Judge came to the conclusion that it was not essential that the claim which can be prayed before the Government or its delegate under Section 33C of Industrial Dispute Act must always be for a predetermined claim. The Government or the Labour Court may satisfy itself about the exact amount and then take action under that Section. The learned Single Judge also observed in his judgment that :

> "Thus, taking into consideration the statutory provisions, objects thereof and the decisions of the apex Court and this Court as also various other High Courts, one thing is very much clear that in the present case, the respondent workmen have claimed overtime wages under the provisions of the Minimum Wages Act which is a statutory preexisting right of the respondents-workmen. Under the Minimum Wages Act, the working hours are fixed and if any workman is required to work more than prescribed working hours, then, the workman is entitled for overtime wages which is a legally vested right under the provisions of the Statute itself. It is not the case of the petitioner Board that the provisions of the Minimum Wages Act, 1948 are not applicable. In view of the decision of the apex Court in case of Patel Ishwarbhai (supra) as also the decision in the case of Tubewell Operator working in the Panchayat (supra), the

> provisions of the Minimum Wages act are applicable and attracted and it is held the said Act is applicable to the other Authorities being a Scheduled Employment. Therefore, taking into consideration these facts, the Labour Court has jurisdiction to decide the claim of overtime wages of the respondents workmen while exercising the powers and jurisdiction under Section 33C(2) of the I.D.Act, 1947. The Labour Court has also power to decide and determine the incidental question if the employer has disputed the claim of the workman. Therefore, the Labour Court has not committed any error while entertaining and examining the claim of overtime wages under the provisions of Section 33C(2) of the ID Act. The claim of overtime wages is not a new right which would require adjudication. On the contrary, it is a recognized, existing, contractual and statutory right based on the service conditions which can be claimed under section 33C(2) of the ID Act against the employer"

##. Before us learned counsel Shri Nanavati for "The Board" appearing in all the appeals had submitted that the provisions contained in the Minimum Wages Act lay down the general rule of law for providing wages in cases where the workmen have done over time with employer. However, in order to claim over time wages the workmen have to establish by leading authentic oral as well as documentary evidence that they had done over time as ordered by their employer. Firstly, they have to establish that how many hours and for how many days they have worked. He submitted that in all these cases the workmen have miserably failed to prove the same. He also submitted that provisions contained in the Minimum Wages Act cannot be construed as pre-existing right of the workmen be only provide for paying over time wages if the workmen prove that they have done over time then for the period of over time they would be entitled for wages otherwise not. He also submitted that in the instant case employer Board disputed its liability about the over time work done by the workmen, therefore, burden was strictly on the workmen to prove that they had worked over time for particular hours. Shri Nanavati further submitted that as soon as bonafide dispute was raised by the employer then the question of over time and their liability of employer to pay the same was required to be first adjudicated by way of a separate proceedings under Section 10 of the Industrial Dispute Act. He submitted

that after the claim of the workmen regarding overtime was adjudicated then only the workmen could have approached the Labour Court under Section 33C(2) of the Act by way of recovery applications. In support of his submission Shri Nanavati relied upon direct judgment of the Hon'ble Supreme Court in case of (i) Municipal Corporation of Delhi Vs. Ganesh Razzak reported in 1995(1) SCC 235 and (ii) State Bank of India Vs. Ram Chandra Dubey reported in AIR 2000 SC 3734 and the judgment of the learned Single Judge of this court reported in 1998(1) GLH 88. Shri Nanavati further submitted that in the instant case the Labour Court recorded the oral evidence of the witnesses and allowed the parties to cross-examine the and after detailed inquiry the Labour Court came to the conclusion that the workmen proved that they worked over time and awarded over time wages. The Labour Court had no jurisdiction to adjudicate the claim of the workmen in this manner when it was seriously disputed by the employer. He further submitted that six months period of limitation is provided for enforcing their claim regarding over time wages and in all these cases the claim of the workmen that they have done over time from 1989 till 31.5.1995 was apparently time barred, therefore, not executable. In support of his submission Shri Nanavati relied on the judgments reported in (i) 1997(2) GCD 173 (ii) 1998(2) GCD 1353 and (iii) 2000(2) GLR 358. He then submitted then submitted that even if this court comes to the conclusion that the direct recovery applications without pre-adjudication of their claim filed by the workmen were maintainable under section 33C(2) of "the Act" before the Labour Court, then also in the instant case there was no evidence whatsoever led by the workmen to show that they had worked over time of 4 hours per day every day for all these years. He submitted that the finding of fact recorded by the Labour Court in the instant case is absolutely perverse as the Labour Court has completely ignored the evidence of Deputy Executive Engineer, Shri Chauhan examined by "the Board" and simply relied on the evidence of sole workman, Shri Ketan Pandya, whose evidence is not all reliable. Shri Nanavati also submitted that the claim of the workmen that they were working over time every day for 4 hours was clearly denied by "the Board" in the reply and also in the evidence of Shri Chauhan, Deputy Executive Engineer. He further submitted that it was specifically contended by "the Board" in its reply that the workmen were actually working for only 2-3 hours per day but paid salary of 8 hours per day. He also submitted that the explanation offered by Shri Ketan Pandya on his behalf and on behalf of other 42 workmen that under the threat they had not

complained to anyone regarding over time work taken by the employer is not at all believable. He submitted that one may not complain about the injustice meted out to him for few days or for few months but not for so many years. He submitted that it is impossible to believe that all the 43 workmen who joined service from 1989 up to 1992, would not make grievance till 1995. He submitted that on one day all of them came to the court by way of separate applications and submitted that their employer was taking over time work from them for all these years itself suggest that there was some oblique motive on their part. Shri Nanavati has also pointed out from the evidence of workman, Shri Ketan Pandya that admittedly they had not lodged any complaint in writing till they had filed recovery applications before the Labour Court. They have tried to offer lame excuse that they had made oral complaints without giving any details regarding time, date etc. and no one was examined in support of their say that they had lodged their oral complaint in the past before approaching the Labour Court by way of recovery applications. He, therefore, submitted that the impugned judgment and award passed by the Labour Court as well as the common judgment and order passed by the learned Single Judge dismissing all the writ petitions be quashed and set aside.

##. At the outset, we must state that learned counsel Shri Pathak for the respondents-workmen appearing in all the appeals had raised preliminary objections regarding maintainability of all the Letters Patent Appeals. He submitted that the impugned common judgment and award passed by the Labour Court was challenged by "the Board" before this court in writ petitions which were filed under Article 227 of the Constitution of India and the learned Single Judge also exercised his jurisdiction under Article 227 of the Constitution of India, therefore, under clause 15 of the Letters Patent the appeals before this court would not be maintainable. He also submitted that this Bench itself has dismissed several Letters Patent Appeals on this ground, therefore, all these appeals be dismissed only on the ground of maintainability without going into the merits of the case. In our considered opinion it was highly improper on the part of the learned counsel to make such vague submissions without citing any judgment of this court that on the ground of maintainability of appeal this court had dismissed several Letters Patent Appeals in the past. It is not required to be stated that if the petitions were filed only under Article 227 of the Constitution of India and if the learned Single Judge also exercised his jurisdiction only under Article 227 of

the Constitution of India then obviously Letters Patent Appeal would not be maintainable. But, it depends on facts of each case.

##. Coming to the present Letters Patent Appeals it is clear that "the Board" had filed all the writ petitions before this court under Articles 226 and 227 of the Constitution of India. Not only that the learned Single Judge has also exercised his power under Articles 226 and 227 of the Constitution of India. Having carefully gone thorough the common judgment and order passed by the learned Single Judge of this court it is clear that the learned Single Judge has mainly exercised his jurisdiction under Article 226 of the Constitution of India. In that view of the matter, we have no hesitation in holding that all these Letters Patent Appeals were maintainable. Hence, preliminary objections raised by learned counsel Shri Pathak is rejected about the maintainability of these appeals is rejected.

##. Shri Pathak then submitted before us that all the workmen were daily wagers and covered by the definition of "Employer" under Section 2(i) of the Minimum Wages Act, 1948. He, therefore, submitted that once the provisions of Minimum Wages Act were applicable to them then the workmen had two remedies; (i) to approach the authority under the provisions of Minimum Wages Act or (ii) to approach Labour Court under Section 33C of Industrial Dispute Act and, out of two remedies if the workmen have availed the remedy under Section 33C(2) of the Industrial Disputes Act before the Labour Court, instead of approaching the authority under Minimum Wages Act, then it cannot be said that the Labour Court had no jurisdiction to entertain recovery applications under Section 33C(2) of the Industrial Disputes Act, without pre-adjudication of the claim regarding over time wages. He also submitted that when the Labour Court has come to the conclusion that all the workmen worked 12 hours instead of 8 hours per day and still not paid over time wages of 4 hours per day then such finding of fact recorded by the Labour Court after due appreciation of evidence cannot be interfered by this court in its jurisdiction under Article 227 of the Constitution of India. He also submitted that the workmen had pre-existing right to claim over time wages, therefore, the Labour Court had not committed any error in entertaining direct recovery applications filed under Section 33C(2) of the Industrial Dispute Act, without pre-adjudication of the claim, and deciding the same in favour of the workmen.

##. Learned Single Judge in his common Judgment and order has reproduced the entire Section 33C of the I.D.Act as well as Sections 13, 14 & 15 of the Minimum Wages Act and Rule : 25 of the Rules framed under the Minimum Wages Act. Therefore, we would not like to reproduce the same in extenso. However, we are mainly concerned with Section 33C(2) of the I.D.Act, therefore, we would like to reproduce the same, which is as under :

"33C. Recovery of money due from an employer :

(1) xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then, the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within period not exceeding three months.

Provided that where the presiding Officer of a labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

##. Section 33C(2) of the I.D.Act makes it clear that where any workman is entitled to receive any amount or benefit which is capable of being computed in terms of money from his employer and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed then subject to any Rules made under the Act the labour Court has to decide such question within a period of 3 months which period may be extended by the labour Court for the reasons recorded in writing if it is expedient so to do. Thus, it is clear that first and fundamental requirement u/s.33C(2) of the I.D.Act is that the Recovery Application can only be entertained by the labour Court only if it is found by the competent authority that the workman is entitled to receive money or any benefit which is capable of being computed in terms of money from his employer. Meaning thereby, there should be prior adjudication by the

competent Authority or the the Court. Admittedly, in the instant case there was no adjudication either by the competent Authority or by the Court. In the instant case the workmen could have claimed overtime wage by lodging their claims before the Workman Compensation Commissioner u/s.20 of the Minimum Wages Act, who could have decided the dispute between the parties after holding the enquiry and giving them opportunity of hearing. However, as per the proviso to Section 20 of the Minimum Wages Act the workman had to present such Application within 6 months from the date on which the Minimum Wages or other amount became payable. The Authority had jurisdiction to entertain any Application filed after a period of limitation of 6 months provided sufficient cause was made out. Admittedly, in all these cases the claim of the workmen was time barred as they were claiming overtime wages in 1995 for the period commencing from 1989 to 1992, therefore, they have not availed remedy under the provisions of the Minimum Wages Act. Still, they could have approached the labour Court by way of reference u/s.10 of the I.D.Act, by raising dispute regarding overtime. Instead of that they approached the Labour Court straightway by filing Recovery Applications u/s.33C(2) of the I.D.Act, without prior adjudication of their claim.

##. It has to be remembered that the right claimed by workman has not been admitted by employer. There are disputed facts on aspect of actual working by workman. It is not mere mathematical calculation which could have been undertaken by the Labour Court on a recovery application. The disputed questions need to be adjudicated upon by a competent authority or court. Labour Court acts only as an executing court and could not have undertaken the exercise of deciding, awarding and executing the claim of workman in one go. In our view, learned Single Judge, therefore, erred in upholding the award of Labour Court while dismissing the petition of employer.

##. The facts of the present case are almost similar to the facts of Ganesh Razzak's case reported in 1995(1) SCC 235. In Ganesh Razzak's case other workmen were working as daily-rated casual workers in Delhi Municipal Corporation. They claimed that they were doing same kind of work as their regular employees were doing and therefore they were required to be paid the same rate as the regular employees on the principle of "Equal Pay for Equal Work". On this basis they claimed computation of the arrears of wages at the rate at which the wages were paid to the regular employee in accordance with the

provisions of Section 33C(2) of the Act. By accepting their claim the Labour Court passed an Award in their favour against which the writ petitions were filed by the Delhi Municipal Corporation before the Delhi High Court which were dismissed by the High Court, against which Special Leave Petition was filed by the Delhi Municipal Corporation before the Hon'ble Supreme Court and by granting S.L.P. all the Appeals were allowed by the Hon'ble Supreme Court.

It was held by the Supreme Court that the claim of the respondents - workmen, who were daily rated / casual workers to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication of recognition by the employer without which the stage for computation of that benefit could not reach, therefore, the workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33C(2) of the I.D.Act.

It was further held that...

"Where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on the basis in exercise of its power under section 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution. The power of the Labour Court under Section 33C(2) extends to interpretation of the Award or settlement on

which the workman's right rests."

The aforesaid Judgment of the Hon'ble Supreme Court in Ganesh Razzak's case (supra) came to be considered and relied upon by the Hon'ble Supreme Court in the case of STATE BANK OF INDIA v/s. RAM CHANDRA DUBEY & ORS. reported in AIR 2000 SC 3734, wherein the Hon'ble Supreme Court held that ...

"Where a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit, he can approach Labour Court under S.33C(2) of the Act. The benefit sought to be enforced under S. 33C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered, just and fair on the other hand is vital. The former falls within the jurisdiction of Labour Court exercising powers under S. 33C(2) of the Act while the latter does not, no relief can be granted on an application under S.33C(2) for computation of backwages on basis of award of reinstatement."

##. In course of arguments, Mr. Pathak, learned Advocate for the respondents, placed reliance on the following decisions to support the impugned judgments and orders:-

(1) East India Coal Co. v. Rameshwar & Ors., AIR 1968 SC 218.

(2) Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli, AIR 1969 SC 1335.

(3) M/s R.L. Kalathia & Co., Bhavnagar v. State of Gujarat & Ors., 1990(1) GLR 236.

(4) Somiben Mathurbhai Vasava v. M/s Lalji Hakka Parmar, 1984 GLH 644.

(5) Central Bank of India v. P.S. Rajagopalan, etc., AIR 1964 SC 743.

He submitted that the view taken in these decisions is that a Labour Court in exercise of powers

under Section 33C(2) of the Industrial Disputes Act can hold an inquiry incidental to the proceedings and can arrive at a decision. He heavily relied upon the decision in the case of Central Bank of India v. P.S. Rajagopalan, etc. and submitted that this decision is taken by a Constitutional Bench of the Apex Court, which has been accepted by the learned Single Judge while passing the impugned order, wherein it has been categorically held by the Apex Court that the Labour Court has jurisdiction to determine whether workman has right to receive the benefit. According to Mr. Pathak, right of the workman to receive overtime did exist and, therefore, the Labour Court was justified in holding an inquiry and passing the order. He submitted that in the said decision, the Apex Court has held that Section 33C(2) takes within its purview cases of workmen who claimed that the benefits to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers. Mr. Pathak submitted that, in the cases before this Court also, similar is the situation.

##. We are afraid, it is not possible to accept this contention of learned Advocate, Mr. Pathak, because in a subsequent judgment in the case of Municipal Corporation of Delhi v. Ganesh Razak & Another, (1995) 1 SCC 235, the Apex Court has held that a Labour Court in exercise of jurisdiction under Section 33C(2) of the Industrial Disputes Act cannot adjudicate dispute of entitlement or basis of claim of the workmen. The Apex Court further held that, it can only interpret the award or settlement on which the claim is based. Its jurisdiction is like that of an Executing Court. While delivering that judgment, the Apex Court also considered the case of Central Bank of India v. P.S. Rajagopalan (supra) in paragraph 8 and observed that the said decision itself indicates that the power of Labour Court under Section 33C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer.

##. In East India Coal Co. v. Rameshwar, AIR 1968 SC 218, relied upon by Mr. Pathak, it has been held, while considering the scope of Section 33C(2) of the Industrial Disputes Act, that it is clear that the right to the

benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to relationship between an industrial workman and his employer. We are at loss to appreciate that as to how this decision can help the respondents.

##. Learned Advocate, Mr. Pathak, again heavily relied on paragraph 5 of the decision in the case of Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli, AIR 1969 SC 1335, wherein it is observed that "on the first question, both the Labour Court and the High Court held that the contention raised on behalf of the appellant that the jurisdiction of the Labour Court was excluded because of Section 20(1) of the Minimum Wages Act has no force, on the assumption that the claims made in these applications under Section 33C(2) of the Act could have been presented before the Labour Court under Section 20(1) of the Minimum Wages Act. In our view, this assumption was not justified." It is required to be noted that later part of the paragraph and subsequent observations are important. In paragraph 5, in the later part, the Apex Court observed as under:

> "As we shall indicate hereinafter, the claims made by the workmen in the applications under Section 33C(2) of the Act could not have been made before the Labour Court under Section 20(1) of the Minimum Wages Act, so that it is not necessary for us to decide the general question of law whether an application under Section 33C(2) of the Act can or cannot be competently entertained by a Labour Court if an application for the same relief is entertainable by the Labour Court under Section 20(1) of the Minimum Wages Act."

In paragraph 7, the Apex Court observed as under:-

> "7. We have examined the applications which were presented before the Labour Court under Section 33C(2) of the Act in these appeals and have also taken into account the pleadings which were put forward on behalf of the appellant in contesting those applications and we are unable to find that there was any dispute relating to the rates. ..... The only question that arose was whether there were any rates fixed under the Minimum Wages Act for overtime and for payment for work done on days

of rest. Such a question does not relate to a dispute as to the rate enforceable between the parties, so that the remedy under Section 20(1) of the Minimum Wages Act could not have been sought by the applicants in any of these applications." (Emphasis supplied)

##. It is, thus, clear that, in that case before the Apex Court, there was no dispute on question of fact, unlike in the matters before us where the employer has disputed the factum of the workmen having worked overtime. Therefore, this decision will not help the respondents.

##. In M/s R.L. Kalathia & Co., Bhavnagar, v. State of Gujarat (supra) relied on by Mr. Pathak, the contention was that the minimum wage notification was not applicable to the facts of the case and, therefore, the application under Section 33C(2) of the Industrial Disputes Act could not have been granted by the Labour Court. It was contended that Minimum Wages Act is a self-contained Code and, therefore, the workmen could not have filed application under Section 33C(2) of the Industrial Disputes Act and this Court held that there is no bar on entertain application for recovery of minimum wages under Section 33C(2) of the Industrial Disputes Act. In that case, there was no dispute that the workmen were paid less than the minimum wages prescribed and the question was only that of computation of the difference between the wages paid and the wages payable as per the Minimum Wages Notification. The decision, in our view, cannot apply to the facts of the present case.

##. In the case of Somiben Mathurbhai Vasava v. M/s Lalji Hakka Parmar Leather Works Co., 1984 GLH 644, this Court held that there is no bar of jurisdiction against the remedy in Section 33C of the Industrial Disputes Act by virtue of Section 24 of the Minimum Wages Act. There cannot be any dispute on this question, but it does not carry the case of the respondents any further.

##. It would be appropriate to refer to a recent decision of the Apex Court in the case of State Bank of India. v. Ram Chandra Dubey, AIR 2000 SC 3734, where the Apex Court, after considering the decision in Central Bank of India v. P.S. Rajagopalan (supra) and Municipal Corporation of Delhi v. Ganesh Razak (supra), in terms, held as under :-

"The benefit sought to be enforced under Section 33C(2) of the Act is necessarily a

> pre-existing benefit or one flowing from the pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit which is considered just and fair on the other hand is vital. The former falls within jurisdiction of the Labour Court exercising powers under Section 33C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workmen as the specific question of the relief granted is confined only to reinstatement without stating anything more as to the back wages. Hence, that relief must be deemed to have been denied for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when the question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom reference under Section 10 of the Act is made."

##. In view of the above discussion, in our view, none of the decisions relied upon by the learned Advocates for the respondents can help the respondents.

##. We have already reproduced the relevant averments made by the workmen in their recovery applications before the Labour Court and the reply filed by the employer-Board and the material part of the evidence led on behalf of the workmen and the employer. We are fully satisfied that the employer-Board had raised bonafide dispute before the Labour Court regarding the claim of overtime wages of the workmen, which should have been first adjudicated either by the competent authority under the Minimum Wages Act or by the Labour Court in reference proceedings under Section 10 of the I.D.Act. In absence of it all the recovery applications directly filed before the Labour Court by the respondents-workmen under section 33C(2) of the I.D.Act before the Labour Court were not maintainable. Thus, therefore, on this ground alone the impugned common judgment and award passed by the Labour Court and the common judgment and order passed by the learned Single Judge of this court dismissing all the writ petitions were required to be set aside.

##. We may reiterate that factually also the Labour

Court has erred in appreciating the evidence on question whether the workman did work overtime and, if so, to what extent? The conclusions are arrived at in absence of evidence in that regard.

##. Thus, we are of the clear opinion that in the instant case the Labour Court should not have entertained direct recovery application of the workman under Section 33C(2) of the I.D.Act without prior adjudication of their claim regarding over time wages either by the competent authority under the Minimum Wages Act or by the Labour Court in reference proceedings under section 10 of the I.D.Act, when the employer had raised bonafide dispute regarding such claim.

##. So far as the groups of Special Civil Applications are concerned, admittedly, the question involved is identical with limited factual variation on aspect of nature of work of the employees.

##. Special Civil Application No.2327 of 1984 is filed filed by the Corporation against the Judgment and Award passed by the Labour Court, Jamnagar in Recovery Application No.337 of 1982 filed by the respondent workman Chowkidar P. Gagji, wherein the workman contended that he was chowkidar of the Corporation from 1.10.1956 to 8.7.1975 in the Municipal Garden. During that period he worked overtime for 6 hours per day. Thereafter, from 8.7.1975 to 31.3.1982 he worked as Chowkidar in Treasury and done overtime of 4 hours per day. Thus, for the overtime work which he had done for 26 years he claimed Rs.85,995/-. The Corporation raised preliminary objections regarding the jurisdiction of the Labour Court to entertain such Application u/s.33C(2) of the I.D.Act. However, the Labour Court rejected the preliminary objections regarding its jurisdiction to entertain the Recovery Application u/s.33C(2) of the I.D.Act and though there was no evidence on record to show that the workman had worked for how many hours, how many days and for how many years, the Labour Court passed an Award in favour of the workman.

##. Special Civil Application Nos.3946 to 3950 of 1985 were filed by the Corporation against the Award passed by the Labour Court allowing the Recovery Applications filed by the respondents - workmen, who were working as chowkidar at Ranjit Sagar Lake of the Corporation. All of them claimed overtime of 6 hours from 1.1.1976 to 1985. In spite of preliminary objection regarding jurisdiction raised by the Corporation the Labour Court allowed the Recovery Application though there was no

legal evidence on record to show that they worked overtime during that period.

##. Special Civil Applications No.3966 to 3969 of 1985 were filed by the Corporation against the award passed by the Labour Court in favour of the respondents workmen. They worked as Chowkidars and claimed overtime from 1.8.1976 to 1985 and claimed overtime of 6 hours per day, the total claim of Rs.75,846/-. Similar contention was raised before the Labour Court by the Corporation, but the same was not accepted by the Labour Court and the Award was passed.

##. Special Civil Application No.3116 of 1984 was filed by the Corporation against the workman Tribhuvan Golak. He claimed overtime from 1.1.1972 to 31.3.1982 of 6 hours per day and claimed Rs.50,720/-. Similar contention was raised before the Labour Court which was rejected by the Labour Court and the Award was passed in favour of the respondent workman.

##. Special Civil Applications No.1945 to 1952 of 1987 were filed by the Corporation against the Award passed by the Labour Court in favour of the respondents workmen. Similar contention was raised before the Labour Court, but the same was rejected and the Award was passed in favour of the workmen by the Labour Court.

##. We have already taken a view hereinabove that powers of Labour Court under section 33C(2) of the Industrial Disputes Act are that of executing Court and for that purpose, there has to be an undisputed or adjudicated existing right which can be enforced. In all these petitions, admittedly, the Labour Court has entertained claim of workmen in Recovery Application under Section 33C(2) of the Industrial Disputes Act in absence of prior adjudication by competent Court or authority, which it was not competent to do.

The impugned awards passed by the Labour Court in all the petitions, therefore, cannot be permitted to stand. The petitions, therefore, deserve to be allowed.

##. In view of the above, all the Letters Patent Appeals are allowed and the common judgment and order dated 9.5.2000 passed by the learned single Judge of this court (Coram : H.K.Rathod, J.) dismissing all the writ petitions is hereby quashed and set aside and all the writ petitions filed by "the Board" against the impugned common judgment and award passed by the Labour Court, Amreli are accepted. Accordingly, impugned common

judgment and award dated 26.7.1999 passed by the Labour Court, Amreli accepting all the recovery applications of the workmen is hereby quashed and set aside and all the recovery applications filed by he respondent workmen before the Labour Court, Amreli stand dismissed. Accordingly, all these appeals are allowed. However, there shall be no order as to costs.

##. Special Civil Application Nos 2327 of 1984, 3946 to 3950 of 1985, 3966 to 3969 of 1985, 3116 of 1984 and 1945 to 1952 of 1987 are allowed. Order passed by the Labour Court, Jamnagar impugned in the petitions are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(B.J.Shethna, J.)

(A.L.Dave, J.)

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